chapters devoted to such writers as Strindberg, Björnson, Selma Lagerlöf, and Francis Grierson, who are comparatively little known in this country, serve admirably as introductions and as awakeners of intelligent interest. On the other hand, the article upon Joseph Conrad reminds us of what we commonly read in reviews of that writer's books and otherwise does little but epitomize what Conrad himself has told us in *A Personal Record*. Writes Mr. Björkman: "And though, with a touch of melancholy seldom found in him, he [Conrad] has told us that all the long and trying years at sea brought him nothing but 'a dozen or so of commendatory letters,' we who read his books know that those years brought him something more: a sense of life's fullness and seriousness that has proved the steadying principle of his art." Those of us who have read *A Personal Record* know at any rate that that book is a prolonged expression of the writer's sense of the value of his quarter-deck training.

Mr. Björkman regards the progress of human thought as a sort of zigzag swing of the pendulum between the skeptical state of mind on the one hand and the mystical state upon the other. At present the swing is toward mysticism—the "new" mysticism, however, for no phase of thought is ever exactly repeated. "Mysticism has always demanded a plunge of some kind, but the distinguishing mark of our new mysticism is that the plunge stands neither for an end in itself nor for a negation of the ordinary modes and objects of consciousness. The mystic of to-day does not dream of extinguishing the searchlight of self-consciousness. He wishes only to reverse it in order that by its light he may explore the world within and thus attain to new sympathy and new understanding for the world without. He is not renouncing knowledge based upon the testimony of the senses and the judgment of the brain: he is instead trying to supplement it with knowledge reached by new routes." All this is sound and well said. However, certain of the writers considered, such as Edith Wharton, have little discernible relation to the main thesis; of others, such as Bergson, the treatment is rather inadequate; and the unity of the whole book seems too much in the nature of an afterthought.

The essays contained in this volume are agreeable and persuasive, though they have value rather as appreciation, tending to eulogy, than as thorough and consistent criticism. It is advantageous no doubt to view Grierson as the prophet of the new mysticism, Maeterlinck as its poet, and Bergson as its philosopher, but an analysis of modern and future currents of thought demands greater depth of treatment, and Mr. Björkman's book which merely scratches the surface of philosophical criticism is a bit disappointing.

JUSTICE AND THE MODERN LAW. By EVERETT V. ABBOTT. Boston and New York: Houghton Mifflin Company, 1913.

At a time when many of us are becoming uneasily conscious of possible defects in our legal system as well as in our other institutions, this book by a lawyer about the law is to be welcomed. Its aim is to show the possibility of bringing about a practical identity of ethical ideals and legal practice. Substantially it is a searching criticism

of legal principles as understood by "the lawyer of the common law," and of the manner in which the law is interpreted by the courts.

The fundamental difficulty, according to Mr. Abbott, lies in the fact that "we buttress wrongs with fallacies which we are entirely capable of exposing. Upon one pretext or another we refuse to apply principles of morality which we have long ago accepted as sound to cases in which their application will interfere with our customary practices." The three essential principles of law and ethics alike are defined as "the egoistic right of freedom, the altruistic duty to help, and the voluntary, reciprocating rights and duties of contract. Instances of the failure of the law to conform to these principles are discussed at some length. In morals, the author points out, there is no sharp line of distinction between slander and the circulation of defamatory truths, yet the law punishes the one and not the other. The right of privacy—which is violated when, for instance, a person's photograph is published against his will—is not uniformly upheld by the courts. These are cases in which the fundamental right of freedom goes unrecognized. Of greater moment are the injustices which arise from confusion regarding the principles of consensual obligation. The constitutional inability of the law to see that there may be a valid contract without consideration moving from the promisee, has greatly complicated all cases of the type in which A promises B to do something for C—a type illustrated by the case of a telegraph company which promises to deliver a message. Morally such cases are clear, but the amount of legal haggling about them has been extraordinary. Again, the principle of *caveat emptor,* which is not a moral principle at all, has been, the author declares, "little less than terrible in its effects." Actions treated by the courts under the head of "negligence," he further maintains, are for the most part either actions of assault and battery or actions for breach of contract. "If their nature had been clearly understood we should probably have escaped the notorious 'fellow-servant' rule, the absurd theories as to 'assumption of risk' and the anomalous doctrine that the plaintiff must allege and prove the absence of what we call 'contributory negligence.'"

A point upon which Mr. Abbott insists as of prime importance is the distinction between rights based upon altruism and those which are grounded in consensual obligation. Confusion of thought in this matter has bred much mischief. There is no doubt that altruistic obligations should be enforceable and have been enforced by law. But their determination is in the nature of things more difficult than the determination of rights based upon expressed or implied promises. When we attempt to fix prices or wages, we should at least remember, he argues, that we are endeavoring to enforce essentially altruistic duties.

Under the heading, "The Law as Practised," Mr. Abbott endeavors to show how the underlying principles of the law have been misunderstood by lawyers. His analysis of price regulation is indicative of his general line of argument. Corporation lawyers, he maintains, have failed to grasp the fact that the fundamental objection to legislative regulation of prices lies in the fact that such regulation is the adjudication of a right in which one of the parties is denied a hearing.

Treating of "The Law as Administered," the author analyzes various decisions of the courts in which, he believes, inconsistent reasons were

alleged, and justice was warped by unconscious judicial bias, by respect for precedent, or by legal fictions. The courts, while generally honest, have in his opinion given good grounds for popular discontent and suspicion.

Mr. Abbott's book is as clear as Euclid. On the whole, he makes it tolerably plain that a more thorough application to the law of the principles of ethics and logic—an application that might be feared as merely academic—would simplify difficulties and secure the ends of justice. In general, his arguments commend themselves to common sense.

CERTAINTY AND JUSTICE. By FREDERIC R. COUDERT. New York and London: D. Appleton and Company.

This series of essays upon the conflict between legal precedent and the demand for change in the law to meet changes in social conditions and in public opinion suffers from a certain lack of unity, and contains rather more of the sort of historic discussion dear to the heart of the lawyer in love with the lore of his profession than is quite acceptable to the general reader. Certainly discussions of the status and rights of aliens and of the progress of international law in the treatment of political crime seem rather remote from popular interest.

The central thesis of the book is that "the courts are constantly oscillating between a desire for certainty on the one hand and a desire for flexibility and conformity to present social standards on the other. It is impossible that in a progressive society the law should be absolutely certain; it is equally impossible that the courts should render decisions conforming to prevailing notions of equity without thereby causing a considerable degree of uncertainty." Codification is not the remedy, for the problem usually to be solved is not what rule the law prescribes, but which of several rules applies to a given case.

The law does and must change through application to changing conditions. As an instance of "constitutional development, the evolution of the conception of the right of trial by jury is traced. Regarded originally as an inalienable right, trial by jury has at last been declared by the Supreme Court of the United States to be a mere mode of procedure. As suggestive of change in another direction, the author, comparing the French criminal procedure with our own, finds advantages in the inquisitorial system and questions the wisdom of the principle that the accused need not testify. Discussing the troubled subject of the Sherman Law, Mr. Coudert finds the "rule of reason" not impossible of fairly uniform application. The true meaning of the Act as interpreted by the courts seems to be "that all contracts and combinations which directly tend to restrain trade are unlawful, and that all attempts to monopolize, brought about by whatever methods, old or new, are equally within the statute." As to the charge of vagueness, the author reminds us that "one is forbidden under severe penalties from driving negligently along the highway, and it is for the judge to charge the jury what constitutes negligence." In a later chapter the almost incredibly medieval story of the progress of the law regarding "riparian rights" certainly illustrates the perversion of precedent, though the subject seems not of first-rate importance.